

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6883 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 - No

-----  
M A DHANDHAL

Versus

AMRELI NAGAR PALIKA

-----  
Appearance:

MR DM THAKKAR for Petitioner

MR PM THAKKAR for Respondent No. 1

-----  
CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/07/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner, an employee of Amreli Municipality [hereinafter referred to as "the Municipality" or "the respondent-Municipality"] has challenged the inaction on the part of the respondent-Municipality in not regularizing the petitioner's services even though the services of the

petitioner's juniors are regularized.

2. The petitioner was appointed as a Clerk under the respondent-Municipality with effect from 2.11.1984. Initially the petitioner was appointed for 29 days for about four times and thereafter the petitioner was appointed as a daily wager on temporary basis. It is the specific case of the petitioner that from 2.11.1984 till the date of filing of the petition the petitioner has been continuously serving as a Clerk. The petitioner has also relied upon the certificate dated 18.8.1992 issued by the Chief Officer of the Municipality certifying that the petitioner was working as a daily wager Clerk in the octroi department in the Municipality since 1984 and that his services were found to be satisfactory. In the year 1986 the petitioner and other similarly situate employees had apprehended termination of their services and had filed a suit in the Civil Court at Amreli being Regular Civil Suit No. 397/86. It is the case of the petitioner that in the suit that an assurance on behalf of the respondent was given that the claim of the petitioner for giving permanent status was accepted by the Municipality and that the services of the petitioner were not to be terminated. The Chief Officer of the Municipality had passed a joint purshis before the Civil Court on 22.2.1991 to the aforesaid effect and the said suit was withdrawn by the petitioner on that basis. The cause of action for filing the present petition arose when the services of two persons, viz. Mahesh Boricha and Yogesh Shukla came to be regularized. According to the petitioner, the said two employees were junior to the petitioner, but still their case was considered for regularization earlier ignoring the petitioner's claim who had already put in 8 years service when the services of the juniors came to be regularized. In this petition, the petitioner has pointed out that the petitioner is fully qualified and eligible to hold the post of the Clerk under the respondent-Municipality and that the petitioner has been rendering services for the Municipality continuously since 2.11.1984 and that there are clear vacancies from 31.8.1992 on account of the retirement of three clerks.

3. While admitting the petition, this Court granted ad-interim relief restraining the respondents from confirming any daily wager octroi clerk as regular clerk and restraining the respondents from terminating the services of the petitioner as a daily wager. The ad-interim injunction was continued from time to time until further orders.

4. At the hearing of the petition, the learned counsel for the petitioner reiterates the submissions made in the petition and states that some more junior employees were also regularised in the year 1995 during pendency of this petition.

5. No affidavit-in-reply has been filed on behalf of the respondent-Municipality either at the admission stage or at the stage of final hearing. The Court, therefore, proceeds on the footing that there is no dispute about the averments of facts made in the petition.

6. Considering the fact that the petitioner has been continuously rendering services since 2.11.1984 and in view of the fact that the services of junior employees viz. Mahesh Boricha and Yogesh Shukla, who were juniors to the petitioner as daily wagers, have been regularized in 1991-92 and in view of the purshis dated 22.2.1991 filed by the Chief Officer before the Civil Court, it clearly appears that the petitioner has been meted out arbitrary and discriminatory treatment by the respondent-Municipality by not even considering the petitioner's case for regularization. Hence, it would be just and proper to direct the respondent-Municipality to consider the petitioner's case for regularization in light of the observations made in this judgment.

The petitioner's case for regularization shall be considered within a period of two months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

7. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

July 6, 1999 (M.S. Shah, J.)

sundar/-